



WRC Consultation
Retail Market Opening Programme
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Strategy & Regulation

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Dear Sir

Consultation on the Wholesale Retail Code

We welcome the opportunity to comment on the Wholesale Retail Code ("WRC").

With respect to the consultation question, we support the approach taken to the changes in the WRC as described in Sections 3.1 to 3.3. We also agree that the WRC is in a form ready to be issued by Ofwat and we are comfortable with the Designation Document. Regarding Section 2 "Overview of the Legal framework" we find this helpful but would welcome an explanation of why the Market Arrangements Code is given precedence over the statutory WRC.

There are, however, two changes we feel are required in advance of Market Opening.

The first relates to inconsistency between Ofwat's Policy on credit and collateral arrangements and the Wholesale Retail Code. The Policy (as stated in the consultation response document "*Credit terms between wholesalers and retailers in the new retail market*"), is that if a retailer defaults with a wholesaler, then it is deemed to have defaulted with all wholesalers. In contrast this provision seems to have been omitted from the WRC. It seems appropriate, therefore, to change the WRC to make it consistent with the Policy.

The second relates to the conditions precedent for the provision of credit support. Currently, the Wholesale Contract has a condition precedent for credit support to be in place prior to the commencement of the provision of the wholesale services. However, within the WRC there is no mechanism by which a wholesaler can prevent supply prior to the provision of credit support. Our suggested change would have the effect of preventing supply prior to the provision of credit support, which we believe is a necessary control.

We attach proposed wording changes accordingly.

Yours faithfully

A handwritten signature in blue ink that reads "Nick Fincham".

Nick Fincham
Director of Strategy & Regulation

Proposed change 1: Implementation in the WRC of the ‘default with one, default with all’ policy

In the “Credit terms between wholesalers and retailers in the new retail market” publication there is the statement that:

“for the orderly operation of the market, we proposed in the consultation to treat a retailer in default with one wholesaler as being in default with all wholesalers, and the credit support options in place would apply to all wholesalers affected. We did not receive any challenge to this proposal, and as such we confirm that retailers in default with one wholesaler will be in default with all wholesalers who they have entered into a contract with”.¹

We suggest that the following sections of the WRC are modified to reflect this decision.

Clause 11.5.1: We suggest that this is changed to put an obligation on the Contracting Wholesaler to report the fact of the Contracting Retailer becoming a Defaulting Trading Party to the Authority and the Market Operator, instead of it being optional.

Clause 11.5.2: We suggest that this is changed to put an obligation on the Contracting Retailer to report the fact that it considers a Contracting Wholesaler is in breach of the Wholesale Contract for Wholesale Services, instead of it being optional.

Clause 11.5.3: We suggest that a new clause (11.5.3) is created that explains that when the Market Operator has received a notice from a Contracting Wholesaler that a Contracting Retailer has been declared a Defaulting Trading Party, or has received a notice from a Contracting Retailer that it considers that a Contracting Wholesaler is in breach of the Wholesale Contract for Wholesale Services, then the Market Operator is obliged to inform all Trading Parties of this notice, together with the reasons given in the notice.

¹ “Credit terms between wholesalers and retailers in the new retail market – a consultation”, Ofwat, June 2016, page 10

Proposed change 2: Conditions precedent for the provision of credit support

Currently, the Wholesale Contract for Wholesale Services has a condition precedent for credit support to be in place prior to the commencement of the provision of the wholesale services. However, within the WRC there is no mechanism by which a wholesaler can prevent supply prior to the provision of credit support, since registration for supply and delivery of supply can occur prior to the 'P1' file being provided. Wholesalers are obliged to confirm a valid Wholesale Contract for Wholesale Services with the Market Operator once signed and effective. With this status the Retailer may start registering premises for supply.

We also suggest that the Wholesale Contract for Wholesale Services is amended to require credit support to be provided 10 days before a retailer wishes to start receiving wholesale services. If credit support is not provided in due time, the Wholesaler would notify the Regulator and Market Operator that there would be a delay before the Retailer was able to start receiving wholesale services, in an analogous way to if the contract was being terminated under Clause 11.2.2.

To facilitate this, we suggest changing to Clause 2.1 of the Wholesale Contract for Wholesale Services to read as follows:

- 2.1: This Wholesale Contract shall commence or be deemed to commence:
 - 2.1.1 on the date of the Wholesale Contract with respect to the requirement to put in and /or have in place any applicable condition precedent set out in Clause 3.2 below. Such conditions precedent is required to be fulfilled ten (10) Business Days before the Effective Date and in the case of any Eligible Credit Support, such Eligible Credit Support shall only be effective from the Effective Date;
 - 2.1.2 with respect to all other matters not referred to in Clause 2.1.1 above on [insert the agreed date] (the "Effective Date") and continue with full force and effect unless and until terminated in accordance with Clause 2.2.